

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of)	
)	
Implementation of Sections of the)	
Cable Television Consumer Protection)	MM Docket No. 92-266
and Competition Act of 1992)	
)	
Rate Regulation)	

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**REPLY COMMENTS OF LIBERTY CABLE COMPANY, INC.
IN RESPONSE TO THE FIFTH NOTICE OF PROPOSED RULEMAKING**

Liberty Cable Company, Inc. ("Liberty"), by its attorneys, hereby submits these Reply Comments in response to the Commission's Fifth Notice of Proposed Rulemaking in the above-captioned proceeding.^{1/} Commercial rates, like residential rates, are subject to the rate uniformity requirements of Section 623(d) of the Communications Act of 1934 ("Communications Act")^{2/} and Section 76.984 of the Commission's Rules.^{3/}

^{1/} Implementation of Rate Regulation Sections of the Cable Television Consumer Protection and Competition Act of 1992, Second Order on Reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38 (rel. March 30, 1994).

^{2/} 47 U.S.C. § 543(d).

^{3/} 47 C.F.R. § 76.984.

I. Background

Liberty is a satellite master antenna television ("SMATV") operator that is successfully overbuilding and competing head-to-head in New York City with Time Warner Cable ("Time Warner"). Time Warner has engaged in the offering of predatory bulk rates whose purpose is to stamp out competition from Liberty. Liberty has previously provided the Commission with evidence of Time Warner's discriminatory and predatory pricing practices.^{4/} Despite the Commission's adoption of its uniform rate regulations, Time Warner has circumvented both the intent and the terms of the uniform rate requirements with respect to both residential and commercial multiple dwelling units ("MDUs") by continuing to offer predatory bulk rates.

II. Commercial Rates, Like Residential Rates, Should Be Required To Be Uniform.

Section 623(d) of the Communications Act^{5/} provides that:

A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system.^{6/}

^{4/} See Liberty's Opposition to Petition for Reconsideration in MM Docket No. 92-266 (filed July 21, 1993) at 5 ("For example, during the past year, each time Liberty approached an MDU, hotel or institutional user to interest it in switching to Liberty's service, Time Warner offered the MDU, hotel or institution a rate lower than Liberty's rate. The lower rate was at least 25% lower than Time Warner's normal rate. Worse, many hotels were told that Time Warner would do anything it took (i.e., lower its rate to whatever level was necessary) to keep the hotel as a customer.").

^{5/} Time Warner erroneously refers to Section 623(e) as the uniform rate requirement throughout p. 44 of its Comments.

^{6/} 47 U.S.C. § 543(d).

The plain language of the statute does not distinguish between commercial and residential subscribers located in a cable operator's franchise area. Rather, the statute simply requires that uniform rates be offered "throughout" a cable operator's franchise area. Contrary to Time Warner's assertion that "the purpose of such requirement was to ensure that all residential subscribers within a given franchise area received uniform rates",^{1/} Congress evidenced no intent to limit its uniformity requirement to residential subscribers; the relevant legislative history briefly discusses the uniformity requirement and not once states or implies that the protections of Section 623(d) apply only to residential subscribers.

It is noteworthy that the Commission has determined that certain categories of customers may be offered different rates. Specifically, Section 76.984(b) of the Commission's Rules provides that:

This section does not prohibit the establishment by cable operators of reasonable categories of service and customers with separate rates and terms and conditions of service, within a franchise area. Cable operators may offer different rates to multiple dwelling units of different sizes and may set rates based on the duration of the contract, provided that the operator can demonstrate that its cost savings vary with the size of the building and the duration of the contract, and as long as the same rate is offered to buildings of the same size with contracts of similar duration.^{2/}

^{1/} See Comments of Time Warner at p. 44.

^{2/} 47 C.F.R. § 76.984(b).

Although the Commission determined that a cable operator could offer MDUs different rates if such rates were cost justified and offered to similarly situated MDUs, the Commission has never expressed any intent to limit the applicability of the uniform rate requirement to residential subscribers; the Commission should decline to do so now. Indeed, prior to adopting the uniform rate regulation, the Commission implied the contrary when it stated that:

We also find that uniform, non-predatory bulk discounts to multiple dwelling units, including apartment buildings, hotels, condominium associations, hospitals, universities, and trailer parks could form a valid basis for distinctions among subscribers.^{2/}

By referring to both residential (e.g., apartment buildings) and commercial (e.g., hotels) MDUs, the Commission certainly did not contemplate limiting the uniformity requirement to residential subscribers.

Time Warner's Comments in this proceeding disingenuously imply that the Commission has recognized that the uniformity requirements only apply to residential subscribers. Specifically, Time Warner deliberately misinterprets the following Commission statement by failing to consider (and to cite to) the accompanying footnote:

^{2/} Implementation of Rate Regulations Sections of the Cable Television Consumer Protection and Competition Act of 1992, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 at ¶ 423 (rel. May 3, 1993). It is noteworthy that in its Comments, Time Warner proposes that the term "commercial subscriber" be defined to include hotels and "non-profit organizations" (e.g., hospitals, universities, etc.). Comments of Time Warner at p. 31 and n. 59.

The legislative history does not reveal any Congressional intent to mandate a uniform rate for all services and classes of customers. Indeed, Section 623(e) specifically contemplates special categories of customers may receive separate rates.^{10/}

The footnote which Time Warner omitted clarifies what the Commission meant by "special categories of customers". The footnote states that:

The Act permits cable operators to offer "reasonable discounts to senior citizens or other economically disadvantaged group discounts" and also allows cable operators to require and regulate "the installation or rental of equipment which facilitates the reception of cable service by hearing impaired individuals". Communications Act § 623(e), 47 U.S.C. § 543(e).^{11/}

By omitting footnote 1052 and referring to Section "623(e)" as the uniform rate requirement on page 44 of its Comments, Time Warner misrepresents the Commission's pronouncements regarding the scope of the uniform rate requirement.

WHEREFORE, based on the foregoing, Liberty respectfully requests that the Commission disregard Time Warner's comments regarding the applicability of the uniform rate requirement to commercial rates; further Liberty requests that the Commission

^{10/} Id. [footnote omitted].

^{11/} Id. at n. 1052.

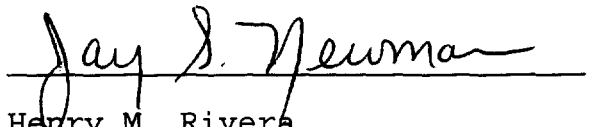
confirm that commercial rates, like residential rates, are subject to the uniform rate requirement.

Respectfully submitted,

LIBERTY CABLE COMPANY, INC.

**GINSBURG, FELDMAN AND BRESS
CHARTERED, ITS ATTORNEYS**

By:

A handwritten signature in dark ink, appearing to read "Jay S. Newman", is written over a horizontal line.

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